DATE: September 11, 1995
CASE NO. 94-ERA-4

IN THE MATTER OF

JIMMY MARTIN,

COMPLAINANT,

v.

DETROIT EDISON,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provisions of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp.IV 1992). The Administrative Law Judge (ALJ) issued a decision recommending that the settlement be approved on August 18, 1995. The parties submitted a Settlement Agreement seeking approval of the settlement and dismissal of the complaint. Because the request for approval is based on the agreement entered into by the parties, I must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. *See* ¶¶ 1 and 4. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2, I have limited my review of the agreement to


determining whether its terms are a fair, adequate and reasonable

settlement of the Complainant's allegations the Respondent violated the ERA.

Paragraph 5 provides that the Complainant and his wife shall keep the terms of the agreement confidential, although it further provides that the agreement does not prohibit or restrict the Complainant from reporting or providing information to any Federal or state governmental agency.

Although the parties have designated the documents in this case as confidential commercial information, the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988), requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.[1] *See Debose v. Carolina Power & Light Co.*, Case No. 92-ERA-14, Ord. Disapproving Settlement and

Remanding Case, Feb 7, 1994, slip op. at 2-3 and cases there cited.

Paragraph 10 provides that the agreement will be governed by the laws of Michigan. I interpret this to mean that the authority of the Secretary of Labor and any Federal court shall be governed in all respects by the laws and regulations of the United States. *See Phillips v. Citizens Ass'n for Sound Energy*, Case No. 91-ERA-25, Final Ord. of Dismissal, Nov. 4, 1991, slip op. at 2.

I find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, I APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE. Paragraph 1.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. §70.26(h).